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9 Attorney for Defendant, City of Toppenish

10 **UNITED STATES DISTRICT COURT**  
11 **FOR THE**  
12 **EASTERN DISTRICT OF WASHINGTON**

13 **CONFEDERATED TRIBES  
14 AND BANDS OF THE  
15 YAKAMA NATION, a  
16 sovereign federally recognized  
17 Indian Tribe,**

18 **Plaintiff,**

19 **v.**

20 **CITY OF TOPPENISH, a municipal  
21 Corporation of the State of  
22 Washington,**

23 **Defendant.**

24 **No. 1:24-CV-3189-MKD**

25 **RESPONSE OF THE  
26 DEFENDANT, CITY OF  
27 TOPPENISH, TO PLAINTIFF'S  
MOTION FOR A TEMPORARY  
RESTRANING ORDER AND  
PRELIMINARY INJUNCTION**

28 The Plaintiff includes among the Exhibits to the declaration of Counsel

29 Ethan Jones, a case, *Glacier Electric, Cooperative Inc. v. Gervais*. United States  
30 District Court for the District of Montana, (CV 14-75-GF-BMM). From what the

31 **RESPONSE OF THE DEFENDANT, CITY OF  
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33 A TEMPORARY RESTRANING ORDER AND  
34 PRELIMINARY INJUNCTION - Page 1**

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1 head notes of this case seemed to say, it might initially sound like a Blackfoot  
2 Tribal Court would have jurisdiction over claims involving non-tribal electricity  
3 providers serving the Reservation, but that is not where this case goes in terms of  
4 the basis for the Court's ruling.

5 In the case before this Court, in our case, the property in question is not  
6 owned by the tribe and it is not trust lands. The Court has long held, going back  
7 decades that Indian tribes do not that have jurisdiction over non-Indians. For  
8 instance, many years ago, the United States Supreme Court ruled in *Oliphant v.*  
9 *Squamish Indian Tribe*, 435 US 919, 98 S. Ct. 1011, 55 L. Ed. 2d 209 (1978) that  
10 Indian tribes do not that have jurisdiction over non-Indians. The case involving  
11 *Glacier Electric Cooperative* is markedly different, in that the Electric Cooperative  
12 serves electricity to the Black Feet Reservation, including Cooperative members  
13 who reside on trust land.

14 In that case, the Court indicated it need only determine whether jurisdiction  
15 was plainly lacking. Again, the Cooperative provided electricity to the Tribe and  
16 had clear commercial relationships with its customers consistent there with.

17 In the case before this Court, Toppenish is a separate jurisdictional entity,  
18 and it *does* have (already has) direct authority and responsibility over Code

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RESPONSE OF THE DEFENDANT, CITY OF  
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A TEMPORARY RESTRAINING ORDER AND  
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1 Enforcement and building codes within its corporate boundaries, and for  
2 enforcement of health and safety codes for the deeded (not tribal or trust) lands  
3 within its corporate boundaries. Again, the property owner in this case is not a  
4 tribal member and, different than *Glacier Electric*, there should be no way that that  
5 the Tribe would be in a position to divest the City of its code enforcement and  
6 health and safety code responsibilities. Again, this is quite a different case from the  
7  
8 *Glacier Electric* case.

10 Additionally, another exhibit appended to the Declaration of Nathan Jones  
11 was an email communication dated November 12, 2024, in which tribal chairman  
12 Gerald Lewis indicated that the Tribe was trying to work in good faith with the  
13 City to resolve the City's health and safety code concerns. That would've been  
14 perhaps my first week at Toppenish as its City Attorney, but neither I, nor any of  
15 the other employees with whom I spoke about this could identify what the Tribe  
16 had done or said that might have been intended to alleviate the City's health and  
17 safety code concerns. Moreover, that same letter indicates that the Yakama Nation  
18 demonstrated (to the City?) that it meets the requirements to be a religious  
19 organizations, and thus exempt from certain codes under RCW 35A.21.360. Not  
20 only do I recall nothing that addressed the religious organizational evidence from  
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RESPONSE OF THE DEFENDANT, CITY OF  
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A TEMPORARY RESTRAINING ORDER AND  
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1 the Tribe, but Exhibit E to the Ethan Jones Declaration was a letter to the Tribe  
2 from Dan Ford, the Toppenish City Manager, where City Manager Ford requests  
3 what evidence the Tribe has that would show it qualifies as a religious organization  
4 under the statute. The date of that letter was November 18, 2024.

6 The next exhibit included with the Declaration of Ethan Jones was a letter  
7 from tribal chairman Gerald Lewis to the Toppenish City Council whereby he  
8 indicates that the tribe “appreciates the City’s prompt response and its willingness  
9 to meet with the Yakama Nation on this important issue. Please let us know your  
10 availability.”

12 However, that email communication was dated November 20<sup>th</sup>, the very  
13 same day that the Tibe’s Declaratory Judgment action was filed with the Court.

15 There wouldn’t have been any time between the Chairman’s letter and the  
16 lawsuit having been filed for anybody to get together and discuss this, willingly or  
17 not. P

19 An additional matter that is of concern in this case is if there were an  
20 emergency to occur at the Farm Worker’s clinic, because there was no permit  
21 evaluation or inspection, the City would not be in a very good position to know  
22 what may be involved or how to respond with the circumstances as they may need  
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25 **RESPONSE OF THE DEFENDANT, CITY OF**  
26 **TOPPENISH, TO PLAINTIFF’S MOTION FOR**  
27 **A TEMPORARY RESTRAINING ORDER AND**  
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1 assistance. This is a big concern, and again the health and safety code requirements  
2 cannot be dismissed or side-stepped, even if the Tribe met the requirements of  
3 being a religious organization.

4

5 Finally, for some reason, there seems to be a misunderstanding, or at least a  
6 disconnect about the language of Sections 35.21.915 and 35A.21.360. Based upon  
7 the arguments and exhibits involved so far, it would seem that the interpretation  
8 that is being given these statutes is that if a religious organization is operating a  
9 shelter, it can disregard health and safety codes, or at least that is how that's how it  
10 sounds to me, perhaps any of the health and safety codes.

11

12 That is not what the statutes say, and as pointed out in the Declaration of  
13 Timothy B Smith, Toppenish, Fire Chief, the language which would seem to limit  
14 City enforcement of municipal regulations specifically except for reasonable  
15 regulations related to health and safety. The fire alarms and sprinkler systems for  
16 residential properties are absolutely and obviously related to health and safety. In  
17 that regard, while cities may be precluded from applying other regulations that  
18 might affect the operation of the shelter, as long as the health and safety code  
19 regulations are reasonable, they should be enforced, whether or not the agency  
20 operating the shelter is a religious organization. Again, as noted by Chief Smith,  
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1 the operative language of the fire alarm and sprinter systems come from the  
2 international building, fire and maintenance codes, and cities and counties in this  
3 state have no choice but to adopt them for the obvious reason of providing health  
4 and safety environments.

6 According, in conclusion, the injunction and restraining order sought by the  
7 Plaintiff should be denied. And the declaratory judgment should likewise fall by  
8 the wayside.

10 Respectfully submitted this 4 day of December, 2024.



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## **CERTIFICATE OF SERVICE**

I hereby certify that on December 4, 2024, I electronically served the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Ethan Jones, WSBA No. 46911  
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